

DATE OF DECISION : 05-02-1996

For Approval and Signature :

THE HON'BLE MR. JUSTICE S.K KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the judgment ? YES/NO

2. To be referred to the Reporter or not ? YES/NO

3. Whether their Lordships wish to see the fair copy of the judgment ? YES/NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ? YES/NO

5. Whether it is to be circulated to the Civil Judge ? YES/NO

Mr. N.S Sheth, learned advocate for the Petitioner.

CORAM : S.K KESHOTE, J.  
05-02-1996

#### ORAL JUDGEMENT

Heard the learned counsel for the petitioner. Prayers made in writ petition by the petitioner are as follows :-

(A) The Hon'ble Court may be pleased to issue a writ of mandamus and/or in the nature of mandamus or any

other appropriate writ, order and/or directions,  
directing the respondents to permanently absorb  
the petitioner in service as a peon;

(B) Pending the hearing and final disposal of this

petition,  
the  
Hon'ble  
Court  
may  
be  
pleased  
to

restrain the respondents from terminating the  
services of the petitioner;

The petitioner was appointed as part-time Peon; which is class-IV post, in the Rural Road Project (Division-II). He was appointed on 13-9-1991; as stated by the petitioner in the writ petition. Petitioner has made a grievance that the Project in which he is working is likely to end in March, 1996. Petitioner having apprehension of termination of his services on the closure of the project and considering that he has acquired a right of absorption elsewhere filed this writ petition. Petitioner also contended that the officers of the project had recommended for his absorption. I have considered the contentions made by the learned counsel for the petitioner and am satisfied that this writ wholly is devoid of any merits and substance. This case is squarely covered by the decision of the Supreme Court in the case of State of Himachal Pradesh, through the Secretary (Rural Development) to the Government of Himachal Pradesh, Shimlantalant versus Ashwani Kumar & Others, reported in JT 1996 (1) SC 214 and in the case of State of Himachal Pradesh, through the Secretary Agriculture to the Government of Himachal Pradesh, Shimlantalant versus Nodha Ram & Ors., reported in JT 1996 (1) S.C 220. In the cases before the Supreme Court, the project in which the respondents therein were given appointment on daily wage was closed due to non-availability of funds. On the writ petition filed in the High court, directions were given by the High Court for regularization of the services of those respondents or to continue them at other places. In para-4 of the said decision, the Supreme Court said -

"4. It is seen that when the project is completed and closed due to non-availability of funds, consequently, the employees have to go alone the closed project. The High Court was not right in giving the direction to regularize them or to continue them in other places. No vested right is created in temporary employment.

Directions cannot be given to regularize their services in the absence of any existing vacancies nor directions be given to create post by the State to a non-existence establishment. The court would adopt pragmatic approach in giving directions. The directions would amount to creating of post and continuing them inspite of non-availability of the work. We are of the considered view that the directions issued by the High Court are absolutely illegal warranting our interference. The order of the High Court is set-aside."

The petitioner has no right for absorption as well as a right to continue in employment. Moreover, petitioner is a part-time employee on consolidated salary.

In the result, this writ petition fails and the same is dismissed.

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Prakash\*